

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL A. RANKIN,

Plaintiff,

DECISION AND ORDER
09-CV-974-A

v.

CITY OF NIAGARA FALLS,
et al.,

Defendants.

This employment discrimination case was referred to Magistrate Judge Jeremiah J. McCarthy pursuant to 28 U.S.C. § 636(b)(1). On June 13, 2012, Magistrate Judge McCarthy filed a Report and Recommendation (Dkt. No. 81) (the “R&R”) which recommended that plaintiff Paul A. Rankin’s pro se motion to vacate a Stipulation of Dismissal and to reinstate the action be granted pursuant to Fed.R.Civ.P. 60(b).

Magistrate Judge McCarthy also granted in the R&R a cross-motion made by plaintiff Rankin’s counsel of record, Christina A. Agola, and her firm, to be relieved as counsel for the plaintiff. The cross-motion was granted “subject to the imposition of sanctions, if warranted” for Ms. Agola’s lack of candor with the Court regarding her conclusions about the viability of the plaintiff’s case.

When a Magistrate Judge rules on a dispositive matter, a ruling to which a

party timely objects is subject to *de novo* review by the presiding district judge. Fed.R.Civ.P. 72(b); see 28 U.S.C. § 636(b)(1)(B). When no timely objection is made to a dispositive ruling, however, review by the presiding district judge is only for clear error. Charvenko v. Barbera, 2011 WL 1659882 at *1 (W.D.N.Y. May 3, 2011).

No objections to the recommendation of Magistrate Judge McCarthy to vacate the Stipulation of Dismissal and to reinstate the action have been filed. The Court finds no clear error in the Magistrate Judge's recommendation to vacate the Stipulation of Dismissal and to reinstate the action. See Fennell v. TLB Kent Co., 865 F.2d 498, 502 (2d Cir. 1989). The recommendation in the R&R is therefore adopted.

Attorney Christina A. Agola, plaintiff Rankin's former counsel of record, did file an "objection" on her own behalf (Dkt. No. 83) to the decision in the R&R that Ms. Agola be required to show cause why she should not be sanctioned for lack of candor with the Court regarding the viability of the plaintiff's case. (Dkt. 81, pp. 14-19). Because Magistrate Judge McCarthy has not yet recommended whether Ms. Agola should be sanctioned, and because she has not been heard by Magistrate Judge McCarthy on the issue of whether she should be sanctioned, Ms. Agola's objection is unripe and the Court recommits that matter to Magistrate Judge McCarthy pursuant to 28 U.S.C. § 636(b)(1) for further proceedings consistent with the R&R.

CONCLUSION

Accordingly, the recommendation that plaintiff Paul A. Rankin's pro se motion to vacate a Stipulation of Dismissal and to reinstate the action [53] be granted pursuant to Fed.R.Civ.P. 60(b) is accepted. The Stipulation of Dismissal [51] and the Text Order approving it [52] are hereby vacated. The Clerk shall reopen the action.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: July 11, 2012